



Office of the Attorney General  
State of Texas

June 14, 1993

DAN MORALES  
ATTORNEY GENERAL

Ms. Cathy Locke  
City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842-0960

OR93-326

Dear Ms. Locke:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20701.

The City of College Station (the "city") has received a request for information relating to Mr. Terry David Wayne Washington, who is scheduled to be executed June 17, 1993, for the offense of capital murder.<sup>1</sup> Specifically, the requestor seeks "all files, records and any other documents in the possession of the College Station Police Department pertaining to Terry David Wayne Washington." You have submitted to us for review the information responsive to the request and claim that it is excepted from required public disclosure by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act.

Section 3(a)(3) excepts from required public disclosure:

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990) at 4. Section 3(a)(3) requires parties to a lawsuit to seek

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<sup>1</sup>See also Open Records Letter No. 93-322 (1993) (discussion of the requestor's first twenty-three requests to the city regarding this matter).

relevant information through the normal process of discovery. *Id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. In Open Records Decision No. 597 (1991), this office held that section 3(a)(3) cannot be invoked to withhold from disclosure first page offense report information held to be open in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) from a defendant who has been indicted, because that information has already been made available to the defendant in the course of his charge and indictment.

We understand that the requestor has filed a writ of habeas corpus on behalf of Mr. Washington. We conclude, therefore, that litigation to which the state is a party is pending in this matter. Furthermore, we accept your determination that the submitted information relates to the pending litigation. Accordingly, unless already released to the requestor through discovery, court order, or any other means, the information submitted to us for review, except for first page offense report information, may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

  
Rebecca L. Payne  
Chief, Open Government Section  
Opinion Committee

RLP/GCK/lmm

Enclosures: Submitted documents

Ref.: ID# 20701

cc: Mr. John W. Michener, Jr.  
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